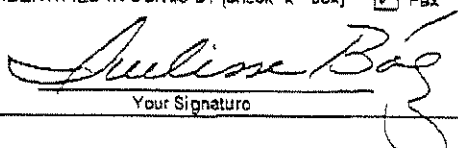
 <p><b>UNITED STATES OF AMERICA</b>  <b>FEDERAL LABOR RELATIONS AUTHORITY</b>  <b>CHARGE AGAINST AN AGENCY</b></p>	<b>FOR FLRA USE ONLY</b>	
	Case No. <b>BN-CA-14-0340</b>	
	Date Filed <b>5-9-14</b>	
Complete instructions are on the back of this form.		
<b>1. Charged Activity or Agency</b> Name: Mark Sochczewsky, RCALJ Address: 26 Federal Plaza, Room 34-116, New York, NY 10278 Tel.#: (212) 264-1110 Ext. Fax#: (212) 264-1519	<b>2. Charging Party (Labor Organization or Individual)</b> Name: AFGE Local 2608 Address: PO Box 13768, San Juan, PR 00908 Tel.#: 787 903 9886 Ext. Fax#: NO FAX NUMBER	
<b>3. Charged Activity or Agency Contact Information</b> Name: Ada Malave, Title: Hearing Office Director Address: 880 Tito Castro Ave., Suite 302, Ponce, PR 00716-4735 Tel.#: (787) 209-2844 Ext. Fax#: ( )	<b>4. Charging Party Contact Information</b> Name: Ivelisse Báez Title: AFGE Local 2608 Exc. Vice-resident Address: PO Box 13768, San Juan, PR 00908 Tel.#: ((787) 903-9886 Ext. Fax#: ( )	
5. Which subsection(s) of 5 U.S.C. 7116(a) do you believe have been violated? [See reverse] (1) and (8)		
6. Tell exactly WHAT the activity (or agency) did. Start with the DATE and LOCATION, state WHO was involved, including titles.  <p>On March 31, 2014, the Union requested detailed information and data to represent Senior Case Technician Edelmiro Vélez on an EEO grievance filed on February 26, 2014.</p> <p>On April 14, 2014, at 11:19 AM, the Activity wrote to the Union and stated that it would respond within a reasonable period of time.</p> <p>The Union requested additional information on April 21, 2014 and was forced to cancel the presentation of the grievance, since the requested data was necessary to duly represent the BUE.</p> <p>To this date, the Activity has not provided the requested data for the Union to fulfill its obligation to represent the bargaining unit employee who filed an EEO grievance based on discrimination for his sexual orientation.</p>		
7. Have you or anyone else raised this matter in any other procedure? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes If yes, where? [see reverse]		
8. I DECLARE THAT I HAVE READ THIS CHARGE AND THAT THE STATEMENTS IN IT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT MAKING WILLFULLY FALSE STATEMENTS CAN BE PUNISHED BY FINE AND IMPRISONMENT, 18 U.S.C. 1001. THIS CHARGE WAS SERVED ON THE PERSON IDENTIFIED IN BOX #3 BY [check "x" box] <input checked="" type="checkbox"/> Fax <input type="checkbox"/> 1st Class Mail <input type="checkbox"/> In Person <input type="checkbox"/> Commercial Delivery <input type="checkbox"/> Certified Mail Ivelisse Báez, EVP Type or Print Your Name		
 Your Signature		05/09/2014 Date

FLRA Form 22 (Rev. 1/99)

DATA QUESTIONNAIRE

*If your answer to any question does not fit in the space provided, you may attach additional sheets. Please indicate which sheet corresponds to which questions.*

Case Name and Number: BN-CA-14-0340

I, Ivelisse Báez, in cooperation with an official investigation being conducted by the Federal Labor Relations Authority pursuant to the Federal Service Labor-Management Statute, supply the following information voluntarily.

My full name is Ivelisse Báez

My Union position/title is Executive Vice-President

My mailing address is P.O. Box 13768, San Juan, PR 00908

My phone number is (787) 278-3231

1. On what date(s) did you make the information request?

March 31, April 4 & 7, 2014

2. What is the name of the requesting union? AFGE Local 2608

3. If not you, what is the name, position, mailing address and phone number of the union representative who submitted the request?

Total of  
19 pages

(19)

*[Signature]*

4. What is the name, position, mailing address and phone number of the agency representative to whom the request was made?

1-Ada Malavé, Hearing Office Director, Ponce, P.R. 00716

Telephone Number: (787) 209-2844 & (866) 217-1844

5. (a) How was the request made: ☒ In writing; ☐ Orally; or ☐ Both in writing and orally?

(b) If in writing, please attach a copy of the request.

(c) If orally, either instead of a written request or in addition to a request: state to whom you spoke; the date of the conversation(s); and, as closely as you can, exactly HOW YOU DESCRIBED the information that you were requesting.

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(18)

13

6. (a) Did you specifically request that the agency either include or delete personal identifiers (such as names, social security numbers or other matters identifying individual employees)?

\_\_\_\_ YES ✓ NO

(b) Was this done: \_\_\_\_ In writing; \_\_\_\_ Orally; or \_\_\_\_ Both in writing and orally?

7. (a) Did you explain why the union needed the requested information:

✓ In writing and orally? \_\_\_\_

(b) If in writing, please attach a copy of the request.

(c) If orally, either instead of a written request or in addition to a written request: state to whom you spoke; the date of the conversation(s); and, as closely as you can, exactly WHAT YOU SAID to explain why the union needed the information you were requesting.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. (a) Do you know if the requested information is contained within a system of records under the Privacy Act? \_\_\_\_ Yes ✓ No. If you do know, please identify that system of records:

   This information is usually provided to the Unions as part of the provisions contemplated in the National Agreement.

**Only Answer the Next Two Questions, 8(b) and 8(c), if your answer to number 8 is YES.**

8(b). If you know that the requested information is within a system of records under the Privacy Act, why doesn't the Privacy Act bar disclosure of the requested information, including any personal identifiers.

17  
LB


8(c). Did you state this to the agency representative?   YES     NO  . If yes, describe as best you can exactly WHAT YOU SAID, to whom and when.

9(a). Did the agency respond to your request: ✓ In writing; \_\_\_ Orally; \_\_\_  
Both in writing and orally; or \_ Not at all?

9(b). If in writing, attach a copy of the written response.

9(c). If in writing, attach a copy of the written response.

9(d). If orally, either instead of a written response or in addition to a written request: state to whom you spoke; the date of the conversation(s); and, as closely as you can, exactly what the agency representative SAID TO YOU.



10(a). Does the Union still want copies of the information as requested?

☒ YES ☐ NO.

10(b). If yes, please explain how the Union intends to use the information?

The Union filed an EEO grievance under Article 18 of the 2012 National Agreement because a bargaining unit employee, Senior Case Technician Edelmiro Vélez was accused of having physically attacked a supervisor. The same supervisor had previously accused this BUE of other incidents and the employee had been suspended without pay due to her accusations. To duly represent the BUE concerning the last accusation, the Union requires all the information gathered by the Agency during the investigation concerning the accusation, which was extremely serious

11. Have the parties attempted to resolve this dispute themselves?

☐ YES ☒ NO. If yes, please describe as specifically as you can what efforts have been undertaken, by whom, when, and the results.

12. Discuss any other matters not listed above which relate to the union's information request and any agency response.

I have read the information above consisting of (number) \_\_\_\_\_ pages, including any attachments, and affirm to the best of my knowledge and belief that it is true.

June 10, 2014

(Date)

Faelise B...

(Name)

Local 2608

*American Federation of Government Employees, AFL-CIO*



# Confidential Communication

August 29, 2014

To: Elen Saunig

Subject: ULP BN-CA-14-0340

From: Ivelisse Báez, EVP

Number of pages including cover letter: 5

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## FEDERAL LABOR RELATIONS AUTHORITY

## BOSTON REGIONAL OFFICE

State of: Puerto Rico

Case Name: Social Security Administration, San Juan, Puerto Rico

Case No: BN-CA-14-0340

AFFIDAVIT

I, Ivelisse Báez, make the following voluntary statement in cooperation with an official investigation being conducted pursuant to the Federal Service Labor-Management Relations Statute. I have been assured by an Agent of the Federal Labor Relations Authority that this Confidential Witness Affidavit will be considered confidential by the government and will not be disclosed, unless it becomes necessary to produce the Confidential Witness Affidavit in connection with a formal proceeding.

Telephone Number: (787) 278-3231 (c)

Address: P.O. Box 13768, San Juan, PR 00908

Email: Ivelisse.Baez@ssa.gov

1 I am currently employed by the Social Security Administration in San Juan, Puerto Rico.

2 My current position is Language Specialist, in the Office of Disability Adjudication and  
3 Review (ODAR). I have been in this position since 1997.

4 I am also the Executive Vice President of AFGE, Local 2608. I have been in this position  
5 since August 2013. From 2010-2013, I was the Grievance Vice President.

6 AFGE Local 2608 represents all Social Security Administration bargaining unit employees  
7 located in Puerto Rico and the U.S. Virgin Islands.

Page 1 of 4

Affiant's Initials IB



8 As the representative of the Charging Party in this case, AFGE Local 2608 (Union), I will  
9 provide the lead and clarifying affidavit. In this charge, the Union alleges that the Social  
10 Security Administration, New York, New York, violated Sections (a)(1), (5), and (8) of the Federal  
11 Service Labor Management Relations Statute (Statute) when the Agency denied the Union  
12 information it requested on March 31, 2014. The above represents all this charge is intended to  
13 allege.

14 On February 26, 2014, the Union filed an EEO grievance on behalf of a bargaining unit  
15 employee, Edelmiro Vélez. The EEO grievance was a result of a chain of events against the  
16 employee by the Agency that the Union believes are due to the employee's sexual orientation.  
17 In September 2013, Vélez was accused of physically assaulting a supervisor. The Agency  
18 conducted an investigatory meeting on September 30, 2013. No Union representative was  
19 present at the meeting.

20 On March 31, 2014, the Union submitted an information request to the Agency. The  
21 Union requested all material, including written and transcribed oral statements by witnesses  
22 (management officials, security personnel and any bargaining unit employee) relied upon to  
23 support the investigation interview conducted of Senior Case Technician Edelmiro Vélez on  
24 September 30, 2013. The Union requested all unsanitized e-mails between all agency officials  
25 on the Ponce ODAR management team, the New York regional management team, the Federal  
26 Protective Services, Puerto Rico police, and the Office of Inspector General. The Union also  
27 requested the completed AIRS incident Report and the relevant state or municipal police report

Page 2 of 4  
Affiant's Initials



28 with a report number assigned by local authorities. An AIRS Report is a report that is prepared  
29 by management whenever there is a violent incident at work.

30 The Union stated in the request that we needed the information in connection with an  
31 EEO grievance filed on February 26, 2014 on behalf of Senior Case Technician Edelmiro Velez.  
32 The Union stated that the information was necessary to allow the Union to demonstrate that  
33 Velez did not engage in any conduct that required the investigatory interview and that the  
34 investigative interview is part of a series of actions that arose from the Agency's intolerance of  
35 Vélez's sexual orientation.

36 The Union wants this information in order to represent Vélez in his EEO grievance  
37 process and prove that management is engaging in a pattern of harassment against Vélez due  
38 to his sexual orientation.

39 On April 14, 2014, the Agency responded to the Union and stated that it would respond  
40 within a reasonable period of time.

41 On April 21, 2014, the Union e-mailed the Agency and stated that we would not be able  
42 to hold the oral presentation of Vélez's grievance (which was scheduled for April 22, 2014)  
43 because we had not received the information that we requested. To that same e-mail, I also  
44 attached another information request. I requested the same and some additional information  
45 and expanded the explanation.

Page 3 of 4  
Affiant's Initials

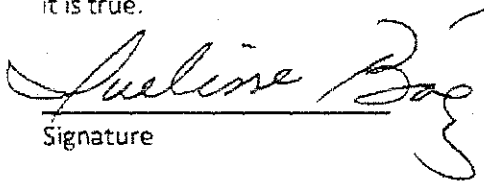


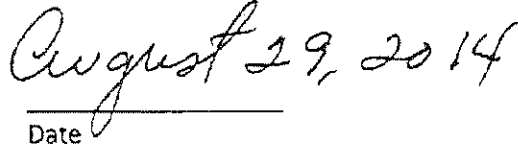
46 On May 12, 2014, the Agency responded to the Union (via Ada Malave, Hearing Office  
47 Director, ODAR, Ponce). The Agency stated that the Union had not provided sufficient  
48 particularized need for the information requested.

49 The Union did not reply to the Agency's May 12, 2014 response. To date, the Union has  
50 not received any of the information that it requested. I believe that the Agency has all of the  
51 requested information readily accessible.

52 The grievance is pending at step 2. We have not had an oral presentation of the  
53 grievance. I expect to receive a step 2 grievance decision soon.

54 I have read, and have had an opportunity to correct, this affidavit consisting of four (4)  
55 pages, including the signature page, and affirm to the best of my knowledge and the belief that  
56 it is true.

57   
Signature

  
Date

Page 4 of 4  
Affiant's Initials



## STANDARD GRIEVANCE FORM

Use additional pages  
for any section of  
this form, if necessary

NAME OF EMPLOYEE <b>Edeleiro Vélez</b>		OFFICE TELEPHONE <b>(787) 841-3780 Ext. 33636</b>
OFFICE LOCATION <b>ODAR - PONCE PUERTO RICO</b>	POSITION <b>Senior Case Technician</b>	GRADE <b>GS08</b>
REPRESENTED BY: <input type="checkbox"/> SELF <input checked="" type="checkbox"/> UNION	REPRESENTATIVE NAME <b>IVELISSE BAEZ, GVP/AFGE LOCAL 2608</b>	REP TELEPHONE <b>(787) 729-7494 Ext. 3295</b>
<p>What article(s) of the Agreement are involved? Management through Group Supervisor Annette Torres, Hearing Office Director Ada Malavé, Albany Chief Administrative Law Judge Robert Wright and Regional Chief ALJ Mark Sochaczewsky violated the following Article of the National Agreement among others: Article 18 Section 1, 2, Section 6 A (First Sentence), Article 3, Section 1 and Section 2 A (in its entirety), E-1, Section 6 B, C, E 1, F, G, Section 15 First Sentence, Article 21, Section 1, Section 2 C First sentence, D First sentence, Section 3 G, H &amp; K, Section 4 D First Paragraph, Section 5 A, B, C, E, F, Section 6 A, D, F, I, J.</p> <p><b>GRIEVANCE ESCALATED TO THE 3<sup>RD</sup> STEP Pursuant to Article 24 Section 8B &amp; Section 9.</b></p> <p><b>ORAL PRESENTATION REQUESTED.</b></p>		

#### Description of grievance

The grievant, senior case technician Edelmiro Vélez has been discriminated against, stereotyped, singled out, and denigrated based on his sexual orientation and demeanor as a person who differs from some of the sex stereotypes of a "masculine" male individual. The Agency, through group supervisor Annette Torres, hearing office director Ada Malavé, chief administrative law judge Harold Glanville, Albany chief administrative law judge Robert Wright and regional chief ALJ Mark Sochaczewsky arbitrarily and unilaterally demonstrated their repulsion against Mr. Vélez since he does not fit into the stereotype management consider acceptable for the Office of Disability Adjudication and Review in Ponce. No matter how hard SCT Vélez works in his strive to excel as an employee, he is described as a mentally disturbed individual based on his sexual orientation and if he expresses his point of view before injustice perpetrated against him, the management team stated above misrepresents him as a disruptive and aggressive person based on his mannerisms, always depending on one sole witness, group supervisor Annette Torres.

SCT Vélez requested EEO counseling and the informal counseling phase of case NY-EEO-14-0081 was completed, and he chose to pursue the case through the grievance process.

The two culminating events that serve as a basis for this more recent grievance include:

1. A Weingarten interview without Union representation based on an event GS Torres framed on September 25, 2013 where she accused SCT Vélez of physical aggression in a calculated move she arranged, thoroughly with prior false and well developed accusations with the avail of other Ponce managers and supported by regional management. Local and regional management continue pursuing an investigation based on false accusations, looking for witnesses that do not exist.
2. The manipulation of SCT Vélez's 2012-13 performance appraisal by lowering his average score despite Agency statistics that prove that he excels in his work performance.
3. In addition, ODAR management retaliated against SCT Vélez for having participated in prior EEO activity when he voluntarily testified in a deposition of the EEO case of fellow worker Emilia Burgos in May 2013.

Management in the Ponce ODAR, and supported by regional managers engaged in prior discriminatory acts against grievant. GS Torres was determined to make this diverse human being miserable by not recommending him for jobs, for which he applied and portraying his sexual orientation as a mental illness. In addition, GS Torres interfered with SCT Vélez professional relationships by prohibiting him from talking to coworkers. SCT Vélez has constantly struggled in his effort to be accepted in the workplace against the constant interference of GS Torres.

Mr. Vélez also engaged in EEO activity in 2010, when an employee publicly and angrily called him "maricón" in Spanish. SCT Vélez was disciplined for defending his dignity and his sexual orientation whereas the employee who called him "maricón" was not. SCT Vélez sought informal counseling and did not process his EEO case through a formal complaint because he was afraid that management could retaliate even more. Mr. Vélez believed that a solution to be free from a work environment where management did not accept diversity was to seek employment at another component, but GS Torres blocked his pursue of a more accepting employment ambience.

All of these events are part of a consistent pattern of discrimination based on the grievant's sexual orientation and in retaliation and reprisal for grievant's EEO activities.

#### Relief Sought:

That ODAR management officials refrain from additional retaliatory acts against grievant.  
That ODAR management officials adhere to the Agency's new vision of Diversity & Inclusion.  
\$150,000.00 dollars be paid for the suffering and damages caused as monetary compensation.  
That management stop changing Mr. Vélez's working conditions and stop impairing his morale and welfare.  
That GS Torres and other management officials refrain from retaliatory actions against grievant for the filing of this action.

I hereby authorize my representative to examine any appropriate official document, personnel record or medical information which may be related to the grievance.

EMPLOYEE SIGNATURE

DATE  
February 26, 2014

STEP 1 SUBMITTED

SUPERVISOR

TELEPHONE

ORAL PRESENTATION  
REQUESTED

DATE RECEIVED

866. 217-1507

☒ YES ☐ NO

2/26/14

**Baez, Ivelisse**

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**From:** Baez, Ivelisse  
**Sent:** [REDACTED]  
**To:** Malave, Ada  
**Cc:** Velez, Edelmiro; Arroyo, Rafael  
**Subject:** FW: Request for Information-Incident Sept 25-2013

<b>Tracking:</b>	<b>Recipient</b>	<b>Read</b>
	Malave, Ada	Read: 4/4/2014 5:45 PM
	Velez, Edelmiro	
	Arroyo, Rafael	

Good Afternoon, Ms. Malavé:

Five days have gone by and the Union has not received the documents requested on March 31, 2014.

**Ivelisse Báez, EVP**  
**AFGE Local 2608**

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**From:** Baez, Ivelisse  
**Sent:** Monday, March 31, 2014 5:42 PM  
**To:** Malave, Ada  
**Cc:** Arroyo, Rafael; Velez, Edelmiro  
**Subject:** Request for Information-Incident Sept 25-2013

Good Afternoon, Ms. Malavé:

This is a Request for Information in connection to an EEO grievance filed on February 26, 2014 on behalf of Senior Case Technician Edelmiro Vélez. The Union, AFGE Local 2608 is representing Mr. Edelmiro Vélez in this process.

We are requesting all material, including written and transcribed oral statements by witnesses (management officials, security personnel and any bargaining unit employee) relied upon to support the investigation interview conducted to Senior Case Technician Edelmiro Vélez on September 30, 2013.

The said interview is related to accusations of physical assault perpetrated against former Group Supervisor Annette Torres, reported on September 25, 2013. Our request is in accordance with 5 USC 7114(b)(4); therefore, be sure to specify in detail the following:

- All the documents related to the said investigation. The information is needed to allow the Union to demonstrate that Mr. Vélez's did not engage in any conduct that required the said investigatory interview and/or any other continuous investigation that he did not jeopardize, in any way or manner, the security of the Ponce Office of Disability Adjudication

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and Review or its employees. We will use the information to demonstrate that the investigative interview is part of a series of actions that rose from management's intolerance to Mr. Velez's sexual orientation.

- The information requested includes unsanitized (raw) emails between all agency officials, the Ponce ODAR management team, the New York Regional management officers, the Federal Protective Services, Puerto Rico police and also, the Office of the Inspector General. The information will become part of the evidence that will demonstrate that the event produced by former GS Annette Torres was not true and did not impact office security. This information is readily available and used by the agency in the form of data amongst agency management officers. The Union requests this data in order to use it in the action pursued through the EEO grievance filed by Mr. Edelmiro Vélez on February 26, 2014.
- The completed AIRS Incident Report.
- State or Municipal Police Report with Report Number assigned by Local authorities.

We require this information to carry out our representational duties and responsibilities. We have a particularized need to obtain this information to duly represent Mr. Vélez as detailed in the previous paragraphs.

We request that this data be furnished to us no later than five (5) days after you receive this communication. If this request is denied, in whole or in part, please inform us in writing, of the name, position title, and grade of the official making that decision and the specific statutory, regulatory or contractual citations(s) on which the decision is based.

Also, we request that if you are to deny a portion of the request, you properly identify which portion you are complying with and identify which portion you are concealing and why.

Sincerely,

Ivelisse Báez, EVP  
AFGE Local 2608





**American Federation of Government Employees  
Local 2608**

Date: 04/20/2014

To: Ada Malavé  
Hearing Office Director  
Office of Disability Adjudication and Review  
Ave. Tito Castro, Suite 302  
Ponce, Puerto Rico 00716-4735

Subject: Incident 09/25/13  
(2-26-2014 EEO Grievance by SGT Edelmiro Vélez)

This memo serves as the Union's request that your office provide us with true copies of documents, records, names, notes, and/or systems of records, etc., listed below. This request is made by AFGE Local 2608 pursuant to the SSA/AFGE Negotiated Agreement Article 3 Section 4, Article 23 section 8, provisions of 5 USC 7114, (B) (4) (A) (B) (C), as well as other applicable provisions of the law, rules, or regulations.

1. We are requesting all material, including:

- (a) Written and transcribed oral statements by witnesses (management officials, security personnel and any bargaining unit employee, such as the complete reports of the interviews conducted with the Edelmiro Vélez and Paralegal Specialist Ana Mercado) relied upon to support the investigation interview conducted to Senior Case Technician Edelmiro Vélez on September 30, 2013.

The said investigative interview conducted on September 30, 2013 with Edelmiro Vélez is related to accusations of an alleged physical assault perpetrated against former Group Supervisor Annette Torres, reported on September 25, 2013.



We will use the information to demonstrate that the investigative interview is part of a pattern of actions described in the grievance.

2. The information requested includes unsanitized (raw) emails and any formal reports filed or submitted by Ponce managers, including any report submitted by the Hearing Office Chief Administrative Law Judge Harold Glanville to the following Agency (SSA) and non-Agency officials:
  - a) Ponce ODAR management team
  - b) New York Regional management officers
  - c) Federal Protective Services
  - d) Puerto Rico State or Municipal police
  - e) Office of the Inspector General.
3. The completed AIRS Incident Report.

We request that this data be furnished to us no later than five (5) days after you receive this communication so that we can duly reschedule the Oral Presentation which was originally scheduled for April 21, 2014. If this request is denied, in whole or in part, please inform us in writing, of the name, position title, and grade of the official making that decision and the specific statutory, regulatory or contractual citations(s) on which the decision is based.

Also, we request that if you are to deny a portion of the request, you properly identify which portion you are complying with and identify which portion you are concealing and why.

⑤

### Particularized needs:

The Union must have this data in order to fulfill its statutory obligation to represent the bargaining unit employee (BUE) in changes in working conditions (CWC), grievance (s), unfair Labor Practice (s) disciplinary action, adverse action and investigation of possible violations of law, rule, regulation or of the Negotiated Agreement in particular Article 3 Section 4, Article 23 section 8, and Article 18. This information will supply the basis for the Unions representational responsibility to investigate and negotiate on behalf of employee. We must have this data to check the accuracy of the information used to support the investigation conducted on September 30, 2013 and to determine if a violation has been committed and what appropriate action should be taken. This data will only be used to fulfill the above listed representational responsibilities.

As you know, our Union's right to receive such document (s) relevant to the performance of representational duties is guaranteed by law. Since that right requires that the documents be provided free of charge, we expect that no fees will be levied. If you cannot provide the data, you are required to give an explanation of the reasons for your refusal to provide the document (s) pursuant to 5 USC s7114. Such explanation must be in writing. Per our SSA/AFGE National Agreement Article 3 Section 4C we must receive the requested information within 2 days, a request for extension of time, can be made to the union or the written explanation of your refusal by April 25, 2014 in order for our Union to carry out its statutory obligation. Failure to meet the time limit without a request for extension will be deemed a refusal to provide these document(s) and will result in appropriate charges being filed.

Ivelisse Báez, EVP /s/  
AFGE Local 2608  
Ivelisse.baez@ssa.gov

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**Baez, Ivelisse**

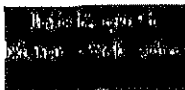
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**From:** Malave, Ada  
**Sent:** Monday, May 12, 2014 2:40 PM  
**To:** Baez, Ivelisse  
**Cc:** Arroyo, Rafael; Velez, Edelmiro  
**Subject:** FW: THIRD Request for Information-Incident Sept 25-2013 – Response to your Request for Information

Good afternoon Ivelisse,

I have enclosed a written my response to your request for information concerning the incident which occurred on Sept 25, 2013.

If you have any questions, please contact me at (866)217-1507 ext. 33603.



*Ada Malave*  
*Hearing Office Director*  
*Ponce CDLR*  
*880 Tito Castro Ave. Suite 302*  
*Ponce, Puerto Rico 00716-4735*  
*Office: (866)217-1507 ext. 33603*  
*Admin.# (866)217-1844*  
*Blackberry: (787)209-2844*  
*Ada.Malave@SSA.GOV*

"Not everybody can be famous, but everybody can be Great because greatness is determined by service." – Martin Luther King.

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**From:** Baez, Ivelisse  
**Sent:** Monday, April 21, 2014 5:53 PM  
**To:** Malave, Ada  
**Cc:** Arroyo, Rafael; Velez, Edelmiro  
**Subject:** RE: THIRD Request for Information-Incident Sept 25-2013

Good Afternoon, Ada:

We will not be able to hold the Oral presentation scheduled for tomorrow concerning Mr. Edelmiro Velez's EEO grievance because we cannot duly represent him without the data we have requested on two previous occasions.



## SOCIAL SECURITY

### MEMORANDUM

Date: May 12, 2014

To: Ivelisse Baez  
AFGE Local 2608  
San Juan, Puerto Rico

From: Ada Malave  
Hearing Office Director  
ODAR Ponce

Subject: Response to Information Request

Refer To: E. Velez

This is the response to the information requests that I received from you. On March 31, 2014 you sent a request for information concerning the grievance filed on February 26, 2014 on behalf of Senior Case Technician (SCT) Edelmiro Velez. The grievance concerns the investigative interview conducted with SCT Velez on September 30, 2013 regarding an interaction with former Group Supervisor (GS) Annette Torres. On April 7, 2014, you sent a second request for information, and on April 22, 2014 you cancelled the oral presentation for the grievance scheduled for that day, and provided a third request for information. For each of your requests for information, you cited 5 USC 7114 (b)(4).

Your March 31<sup>st</sup> request for information consisted of the following:

- 1) All the documents related to the investigation. You indicated that the information is needed to allow the union to demonstrate that SCT Velez did not engage in any conduct that required the investigatory interview and/or any other continuous investigation, and that he did not jeopardize the security of the hearing office or its employees. You alleged that you will use the information to demonstrate that the investigative interview was part of a series of actions that arose from management's intolerance of the SCT's sexual orientation.
- 2) Unsanitized emails between all agency officials, the ODAR Ponce management team, the New York Regional management officers, the Federal Protective Services (FPS), the Puerto Rico police, and the Office of the Inspector General (OIG). You alleged that the information will become part of the evidence that will demonstrate that the event produced by former GS Torres was not true, and did not impact the office security. You indicated that this information is readily available and used by the Agency in the form of data amongst Agency management officers.

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- 3) The completed Automated Incident Report System (AIRS).
- 4) The State or municipal police report with the report number assigned by local authorities.

Your April 7<sup>th</sup> request reiterated a particularized need for the information in order to represent SCT Velez for his grievance.

Your third request of April 22<sup>nd</sup> cited Article 3, Section 4 and Article 23, Section 8 of the AFGE contract, as well as 5 USC 7114 (b)(4)(A)(B)(C). Your request consisted of the following:

- 1) Written and transcribed oral statements by witnesses (management officials, security personnel and any bargaining unit employee, such as the complete reports of the interviews conducted with SCT Velez and Paralegal Specialist Ana Mercado) relied upon to support the investigative interview conducted with SCT Velez on September 30, 2013.
- 2) Unsanitized (raw) emails and any formal reports filed or submitted by Ponce managers, including any report submitted by Hearing Office Chief Administrative Law Judge (HOCALJ) Harold Glanville to:
  - a) ODAR Ponce management team;
  - b) New York Regional management officers;
  - c) Federal Protective Services;
  - d) Puerto Rico or municipal police; and
  - e) The Office of the Inspector General.
- 3) The completed AIRS report.

I find that you have not provided a sufficient particularized need for the information requested. A union must establish that the requested information is required in order for the union to adequately represent its members. Internal Revenue Service, Washington, D.C. and Internal Revenue Service, Kansas City Service Center, Kansas City, Missouri, 50 FLRA No. 86, 50 FLRA 661 (1995) (IRS, KC). A particularized need for the information as stated in U.S. Dep't of Justice, INS, N. Region, Twin Cities, Minn., 51 FLRA 1467, 1472 (1996), requires a union to satisfy its burden of articulating and establishing, with the required specificity, why it needs the information, the uses to which this information would be put, and the connection between those uses, and the union's representational responsibilities.

You stated that the particularized need was to allow the union to fulfill its "statutory obligation to represent the bargaining unit employee (BUE) in changes in working conditions (CWC), grievance (s), unfair Labor Practice (s) disciplinary action, adverse action and investigation of possible violations of law, rule, regulation or of the Negotiated Agreement[.]" This is a very general description of various matters in which a union may represent its bargaining unit. However, you have failed to explain specifically how the requested information is required for you to represent SCT Velez. It is insufficient to merely show "that requested information is or

would be relevant or useful to a union." "Instead, a union must establish that requested information is 'required in order for the union adequately to represent its members.'" IRS, KC, at pp. 669-670.

Under the AFGE contract Article 23, Section 4(A) the Agency "may conduct an investigation prior to proposing any disciplinary or adverse action." In accordance with the contract, I conducted a Weingarten investigation on September 30, 2013 with SCT Velez. Prior to the meeting, I notified Mr. Velez of his right to a representative. I received a response from Local Union President Rafael Arroyo that he was not available for the Weingarten on September 30<sup>th</sup>, nor did he want to delegate this authority to another union officer. The investigation resulted in finding that discipline of SCT Velez was not warranted.

The purpose of a Weingarten meeting is to gather facts so that management can determine if misconduct occurred. There is no role for the union in this process and no obligation by management to include the union in its fact gathering or decision-making process. Consequently, based on the particularized need provided and the fact that management has not taken any action against SCT Velez, you have not established that you have a right to the requested information. \*

For the March 31<sup>st</sup> request, you indicated that the particularized need for the information was to demonstrate an alleged intolerance by ODAR Ponce management of the SCT's sexual orientation. A union "is responsible for articulating and explaining its interests in disclosure of the information. Satisfying this burden requires more than a conclusory or bare assertion." IRS, KC, Id. Your particularized need is a bare assertion with no connection to the investigation. It is essentially an unfounded accusation. As a result, you have not established a particularized need.

If you decide to resubmit your request, including a statement of the uses of the requested information, and how it is required to represent bargaining unit employees, I will again offer full consideration to your request in accordance with the statutory requirements.

If you have any questions, please contact me at (866)217-1507 ext. 33603.

/s/ Ada Malave

*Hearing Office Director*

*Ponce Hearing Office*

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**Baez, Ivelisse**

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**From:** Baez, Ivelisse  
**Sent:** Monday, April 07, 2014 2:08 PM  
**To:** Malave, Ada  
**Subject:** FW: FW: Request for Information-Incident Sept 25-2013

**Tracking:**                      **Recipient**                      **Read**  
                                 Malave, Ada                      Read: 4/7/2014 2:09 PM

Good Morning, Ms. Malavé:

This is the second time you read that the Union requested information concerning the EEO Grievance Edelmiro Vélez filed on February 26, 2014. You have ignored our request, which was made in accordance with 5 USC 71 7114(b)(4).

Once more, we have a particularized need of the requested information to represent the grievant during the scheduled oral presentation that concerns the grievance filed on February 26, 2014.

Cordially,

Ivelisse Báez, EVP  
AFGE Local 2608

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**From:** Malave, Ada  
**Sent:** Friday, April 04, 2014 5:45 PM  
**To:** Baez, Ivelisse  
**Subject:** Read: FW: Request for Information-Incident Sept 25-2013

Your message was read on Friday, April 04, 2014 5:45:21 PM (GMT-05:00) Eastern Time (US & Canada).

③

**Baez, Ivelisse**

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**From:** Baez, Ivelisse  
**Sent:** Monday, April 21, 2014 5:53 PM  
**To:** Malave, Ada  
**Cc:** Arroyo, Rafael; Velez, Edelmiro  
**Subject:** RE: THIRD Request for Information-Incident Sept 25-2013

Good Afternoon, Ada:

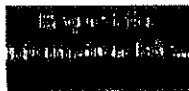
We will not be able to hold the Oral presentation scheduled for tomorrow concerning Mr. Edelmiro Velez's EEO grievance because we cannot duly represent him without the data we have requested on two previous occasions.

As far as "Art.23, Sect.8 of the AFGE contract", nothing in that part of the National Agreement mentions the word "within a reasonable period of time." This is a very serious matter to start defining the term reasonableness, but for the purpose of statute and how it is applied in data requests, I am providing you with the section you cited on your April 14, 2014, 11:19 AM email:

**Section 8. Request for Information**

If requested by the employee or his/her representative, the Agency, in a timely manner, will provide copies of all material including written statements by witnesses relied upon to support the proposal notice. In addition, nothing precludes the Union from requesting additional information in accordance with 5 USC 714(b)(4)

I am also expanding my request as follows, in the attachment below:



Cordially,

Ivelisse Báez, EVP  
AFGE Local 2608

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**From:** Malave, Ada  
**Sent:** Monday, April 14, 2014 11:19 AM  
**To:** Baez, Ivelisse



Cc: Arroyo, Rafael; Velez, Edelmiro  
Subject: Request for Information-Incident Sept 25-2013

Good morning Ivelisse ,

I have received your emails requesting information concerning the Sept. 25<sup>th</sup> incident between GS Torres and SCT Velez.

In accordance with Art. 23, Sect. 8 of the AFGE contract, I will respond within a reasonable period of time.

*Ada Malave*  
*Heating Office Director*  
*Ponce ODIR*  
*880 Tito Castro Ave. Suite 302*  
*Ponce, Puerto Rico 00716-4735*  
*Office: (866)217-1507 ext.33603*  
*Admin.# (866)217-1844*  
*Blackberry: (787)209-2844*  
*Ada.Malave@SSA.GOV*

"Not everybody can be famous, but everybody can be Great because greatness is determined by service." – Martin Luther King.

⑦

As far as "Art.23, Sect.8 of the AFGE contract", nothing in that part of the National Agreement mentions the word "within a reasonable period of time." This is a very serious matter to start defining the term reasonableness, but for the purpose of statute and how it is applied in data requests, I am providing you with the section you cited on your April 14, 2014, 11:19 AM email:

**Section 8. Request for Information**

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I am also expanding my request as follows, in the attachment below:



Cordially,

Ivelisse Báez, EVP  
AFGE Local 2608

---

**From:** Malave, Ada  
**Sent:** Monday, April 14, 2014 11:19 AM  
**To:** Baez, Ivelisse  
**Cc:** Arroyo, Rafael; Velez, Edelmiro  
**Subject:** Request for Information-Incident Sept 25-2013

Good morning Ivelisse ,

I have received your emails requesting information concerning the Sept. 25<sup>th</sup> incident between GS Torres and SCT Velez.

In accordance with Art. 23, Sect. 8 of the AFGE contract, I will respond within a reasonable period of time.

*Ada Malave*  
*Hearing Office Director*  
*Ponce ODR*  
*880 Tito Castro Ave. Suite 302*

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Ponce, Puerto Rico 00716-4735  
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